

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Laura Kastner	Team: Squad #12	CCRB Case #: 201509976	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 11/14/2015 1:31 AM	Location of Incident: East 34th Street and Lexington Avenue	Precinct: 14	18 Mo. SOL 5/14/2017	EO SOL 5/14/2017	
Date/Time CV Reported Mon, 11/23/2015 11:12 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 11/23/2015 11:12 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Bonner	24686	915329	MTS PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Clayton Blair	12956	952472	MTS PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Bonner	Abuse: PO Joseph Bonner searched § 87(2)(b)	
B.POM Joseph Bonner	Abuse: PO Joseph Bonner searched § 87(2)(b)	
C.POM Joseph Bonner	Abuse: PO Joseph Bonner refused to provide his shield number to § 87(2)(b)	

### Case Summary

On November 23, 2015, § 87(2)(b) filed this online complaint via the CCRB's website. At approximately 1 a.m. on November 14, 2015, § 87(2)(b) who was driving her vehicle with her friend, § 87(2)(b) seated next to her, was involved in a hit-and-run vehicle accident in the vicinity of East 50<sup>th</sup> Street and Lexington Avenue in Manhattan. § 87(2)(b) followed the vehicle that hit her vehicle while dialing 911. The 911 operator instructed § 87(2)(b) to pull over in the vicinity East 34<sup>th</sup> Street and Lexington Avenue and await the arrival of officers. An ambulance arrived and was followed by a marked patrol car containing PO Joseph Bonner and PO Clayton Blair, both from the Midtown South Precinct, at approximately 1:31 a.m. Soon after the officers arrived, the ambulance left.

At PO Bonner's instruction, § 87(2)(b) exited her vehicle to tell the officers about the vehicle accident. PO Bonner asked § 87(2)(b) where she was coming from and whose vehicle she was driving. Throughout the incident, PO Bonner repeatedly ordered § 87(2)(b) to exit and reenter her vehicle. He also had her spit out her gum (**Allegation A**). PO Bonner eventually asked § 87(2)(b) if she had had a drink that night. § 87(2)(b) first asked PO Bonner how that was relevant, but eventually acknowledged having one beer at a Knicks game earlier that night. PO Bonner told § 87(2)(b) that she was going to take a breathalyzer test and ordered her to open her mouth. § 87(2)(b) refused. PO Bonner forced the portable breathalyzer ("alco-sensor") inside § 87(2)(b)'s mouth, despite § 87(2)(b) attempting to keep her mouth closed (**Allegation B**). PO Bonner ordered § 87(2)(b) to take a deep breath. At that point, § 87(2)(b) "gave up" and complied.

After the portable breathalyzer test revealed that § 87(2)(b) was legally allowed to drive, PO Bonner began walking back to the patrol car. § 87(2)(b) asked what precinct PO Bonner was from, and for his name and shield number. PO Bonner provided the name of his precinct and his name, but he allegedly refused to provide his shield number (**Allegation C**). PO Blair told § 87(2)(b) that the vehicle accident report would be filed at Midtown North Precinct due to jurisdiction. He then joined PO Bonner in the patrol car. This incident lasted approximately two hours.

There is no video evidence in this case.

No arrests or summonses resulted from this incident.

### Mediation, Civil and Criminal Histories

§ 87(2)(b) rejected mediation. As of January 12, 2016, § 87(2)(b) had not filed a Notice of Claim with the City of New York regarding to this incident (Board Review 01). § 87(2)(b) has never been convicted of a crime (Board Review 02).

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (Board Review 03).
- PO Bonner, a 20-year-member-of-the-service, has 12 prior CCRB complaints filed against him with and a total of 38 allegations, none of which were substantiated. Of the allegations that were fully investigated, four were unsubstantiated, four were exonerated, and six were unfounded.

### Findings and Recommendations

#### Allegation Not Pled

§ 87(2)(b) alleged that PO Bonner physically forced the portable breathalyzer inside her mouth. This force allegation has been subsumed within Allegation B.

**Allegation A – Abuse of Authority: PO Joseph Bonner searched § 87(2)(b)**

It is undisputed that § 87(2)(b) (Board Review 04) called 911 to report that she was involved in a vehicle accident and that PO Bonner and PO Blair responded to § 87(2)(b)'s location in regard and encountered her seated in the driver's seat of her vehicle. It is also undisputed that while speaking with § 87(2)(b) about the vehicle accident, PO Bonner ordered her to spit out her gum. PO Bonner (Board Review 05) said he did so "because sometimes people use it to mask the scent of alcohol and also if we had to give her [a portable] breath[alyzer] test, you have to watch for 20 minutes and not have anything in your mouth." PO Bonner said he did not necessarily intend to administer a breathalyzer test to § 87(2)(b) at the moment he had her spit out the gum, but he "wanted to...see if [he] could smell alcohol...on her after she had gotten rid of the gum."

PO Blair (Board Review 06) said that as soon as the officers approached § 87(2)(b)'s vehicle, they observed that her eyes were "a bit watery," but PO Bonner said he did not notice this until after § 87(2)(b) spit the gum out of her mouth.

An order for an individual to spit something out of their mouth requires reasonable suspicion of a crime. *People v. Simkins*, 1998 N.Y. App. Div. LEXIS 13760 (Board Review 07).

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation B – Abuse of Authority: PO Joseph Bonner searched § 87(2)(b)**

It is undisputed that after § 87(2)(b) was made to spit out her gum, PO Bonner asked her if she had been drinking, and that § 87(2)(b) eventually acknowledged consuming one alcoholic beverage at a basketball game earlier that evening.

§ 87(2)(b) said that PO Bonner then told her that she was going to take a breathalyzer test because he needed to make sure she could drive, and that he ordered her to open her mouth, but § 87(2)(b) refused. § 87(2)(b) said she asked to use her phone to call her spouse who was coming to get her, but PO Bonner said she could not use her phone and again told her that she was going to take the breathalyzer test. Within one minute of bringing up the topic of the breathalyzer, and while standing in front of and to the right of § 87(2)(b) PO Bonner allegedly forced the portable breathalyzer inside § 87(2)(b)'s mouth, despite § 87(2)(b) attempting to keep her mouth closed. § 87(2)(b) said that PO Bonner ordered her to take a deep breath and she gave up and complied.

§ 87(2)(b) said that from her position inside of § 87(2)(b)'s vehicle, she could not see § 87(2)(b) and PO Bonner well at the time that the portable breathalyzer test was administered due to poor lighting. However, she said she heard § 87(2)(b) say she did not need to take the test because she had not drunk anything, and that she saw PO Bonner put the portable breathalyzer

near § 87(2)(b)'s mouth. § 87(2)(b) heard in § 87(2)(b)'s voice that § 87(2)(b) was nervous and was about to cry.

PO Bonner said that after § 87(2)(b) spit out the gum, he noticed that her eyes were watery and bloodshot, and he then smelled "an odor of intoxicating beverage coming from her mouth area." PO Bonner said prior to him beginning his tour that night, around 11 p.m., he heard that the basketball game had already ended. He said he asked § 87(2)(b) where she had been since the game ended, but all § 87(2)(b) said was something about driving a friend home. Additionally, § 87(2)(b) mentioned having a brother who was a NYPD officer, but PO Bonner said § 87(2)(b) provided two last names for that individual at different times. All of these factors led PO Bonner to suspect that § 87(2)(b) was not being truthful.

Although PO Bonner said he initially responded to the scene with the intention of investigating the vehicle accident, his intent now changed to ensuring that § 87(2)(b) was not intoxicated and that it was safe for her to drive home. He decided to conduct a portable breathalyzer test, which he always carries with him, because, "If I arrive at the scene and I see somebody's been drinking...I'm definitely gonna test them before they leave the scene."

PO Bonner said he asked § 87(2)(b) if she would submit to a formal portable breathalyzer test, and that § 87(2)(b) said she had not been driving. PO Bonner noted that § 87(2)(b) told the officers that she had been driving and that she was in the driver's seat of her vehicle with the engine turned on when they arrived. PO Bonner said § 87(2)(b) then said she would just park her car at the incident location and take a taxi cab home, but PO Bonner said, "That's not the way we do things...I'm asking you to take the breathalyzer test." He then provided her with instructions on how to take the portable breathalyzer test.

When asked how § 87(2)(b) responded to PO Bonner's statement, he said that § 87(2)(b) did not say she would not take the portable breathalyzer test, so he held the portable breathalyzer directly in front of her mouth and § 87(2)(b) put her mouth around the plastic tube and blew into the portable machine, producing a test result which indicated that her BAC was .022%. PO Bonner denied forcing the portable breathalyzer mouthpiece inside of § 87(2)(b)'s mouth and denied hearing § 87(2)(b) say anything about not wanting to submit to the test.

PO Blair said that he was inside the patrol car during this part of the incident, that the patrol car was parked behind § 87(2)(b)'s vehicle, and that § 87(2)(b) and PO Bonner were positioned in between the vehicles. He initially denied hearing the conversation between § 87(2)(b) and PO Bonner, but subsequently said he heard PO Bonner ask § 87(2)(b) to take the portable breathalyzer test and that § 87(2)(b) willingly obliged, although not immediately.

PO Blair said § 87(2)(b) seemed "a little bit upset" and said that the officers were acting like she did something wrong, although she "almost right away...after not very long" took the portable breathalyzer test. When asked what took place between § 87(2)(b) saying the officers were acting like she did something wrong and § 87(2)(b) taking the portable breathalyzer test, PO Blair said not that much happened, and that PO Bonner tried to make "it" as quick as possible and "did not want it to be too verbal."

PO Blair noted that while it is not mandatory to obtain the BAC of a motor vehicle operator involved in a motor vehicle accident, § 87(2)(b) seemed "visibly semi-intoxicated" and that her eyes were glassy and the officers smelled alcohol, "so we're gonna give her the test." However, PO Blair denied witnessing PO Bonner force the portable breathalyzer inside of § 87(2)(b)'s mouth.

Every person operating a motor vehicle which has been involved in an accident shall, at the request of a police officer, submit to a breath test to be administered by that officer NYS

Vehicle and Traffic Law, Section 1194.1(b) (Board Review 08). Should a person refuse to submit to a chemical test, including a breath test, the test shall not be given and a written report of such refusal shall be immediately made by the officer whom such refusal was made. NYS Vehicle and Traffic Law, Section 1194.4(b)(1). Even once placed under arrest for driving while ability impaired, the defendant can still refuse to submit to a breathalyzer test, although said refusal can be used against them at trial as evidence of guilt. People v. MacDonald, 89 N.Y.2d 908 (1996) (Board Review 09).

§ 87(2)(g)

§ 87(2)(g)

**Allegation C – Abuse of Authority: PO Joseph Bonner refused to provide his shield number to § 87(2)(b)**

It is undisputed that § 87(2)(b) asked PO Bonner for his precinct and his name and that PO Bonner verbally provided that information, but it is disputed whether PO Bonner was asked for his shield number. § 87(2)(b) said that after PO Bonner told her that she was legally allowed to drive, he began walking back to the officers' patrol car. § 87(2)(b) said she was not finished and asked what precinct PO Bonner was from. He said "Midtown South." § 87(2)(b) asked something to the effect of, "What is your name and what is your badge number?" PO Bonner said his name was "PO Bonner" and spelled it for her. § 87(2)(b) asked, "And your badge number?" but PO Bonner allegedly turned around and walked toward the patrol car. § 87(2)(b) repeated the question several more times as PO Bonner entered the patrol car, although § 87(2)(b) was only certain that PO Bonner heard her first request for his badge number.

PO Bonner denied hearing § 87(2)(b) ever ask him for his shield number. He said that after he told § 87(2)(b) that he was assigned to the Midtown South Precinct, she asked what the number of his precinct was, not what his shield number was, and that he explained to her that there was no precinct number.

§ 87(2)(b) and PO Blair both denied hearing § 87(2)(b) specifically ask PO Bonner for his shield number, although PO Blair corroborated § 87(2)(b)'s assertion that she asked him for PO Bonner's shield number and that PO Blair said he did not know it by heart.

§ 87(2)(g)



Squad: #12

Investigator:	_____	_____	_____
	Signature	Print	Date

Pod Leader:	_____	_____	_____
	Title/Signature	Print	Date

Attorney:	_____	_____	_____
	Title/Signature	Print	Date